

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C 20268-0001

In re:

Post Office at)	
Akron-East Station)	Docket No. A2011-16
1763 Goodyear Blvd., 44305)	
(Paul J. Connor and Shirley)	
Strader, Petitioner)	
(City of Akron, OH Intervenor))	

CITY OF AKRON, OHIO'S INITIAL BRIEF

(July 11, 2011)

Now comes City of Akron, Ohio and files its Initial Brief pursuant to this Commission's June 23, 2011 Order Granting Extension and Modifying Procedural Schedule.

I. PROCEDURAL HISTORY

As this Commission is aware, on May 11, 2011 Paul J. Connor, filed his Petition for Review regarding the closure of the Akron-East Post Office located at 1763 Goodyear Boulevard, Akron, Ohio 44305. On June 10, 2011 City of Akron filed a Notice to Intervene, a Motion to Compel the Production of the Administrative Record, and a Motion in Support of Paul J. Connor's Application for Suspension of Determination.

As the Post Office had not produced the Administrative Record, and had not responded to the Application for Suspension, Intervenor filed a Complaint for Declaratory Judgment, Injunctive Relief, and a Motion for a Temporary

Restraining Order and Preliminary Injunction in the Summit County Court of Common Pleas on June 14, 2011. The action was brought, *inter alia* to enforce, and enjoin and restrain the Postal Service from violating any order issued by the Postal Regulatory Commission. *See 39 U.S.C. § 3664.* Since the United States Postal Service had not complied with this Commission's Orders, the Court had jurisdiction to enforce compliance. The United States Postal Service promptly removed the action to Federal Court.

As the relief requested from the District Court had already been *Ordered* by this Commission, the United States Postal Service was faced with a Morton's Fork. The USPS could continue with its argument that this Commission lacks any authority and/or jurisdiction to consider the Petition for Review and submit to the jurisdiction of the Court. Alternatively, the USPS could acknowledge for the first time in the history of station and branch appeals that this Commission possesses the authority and/or jurisdiction to consider those appeals.

The United States Postal Service tacitly acknowledged that this Commission possessed the authority and/or jurisdiction to hear the Petition for Review. Accordingly, the USPS produced the Administrative Record and filed a Response to the Application for Suspension. Since the USPS complied with this Commission's Order, the District Court dismissed the Complaint and Motion.

II. LAW & ARGUMENT

A. Jurisdiction

This Commission has jurisdiction over this matter pursuant to 39 U.S.C. § 404(d)(5). Pursuant to this jurisdiction, this Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration. 39. U.S.C. § 404(d)(5). Additionally, this Commission may set aside any determination, findings and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) Without observance of procedure required by law; or (C) Unsupported by substantial evidence on the record.

Intervenor submits that the Final Determination is substantively flawed, arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law. Intervenor also submits that the closure was without observance of procedure required by law and was unsupported by the substantial evidence on the record.

B. The Final Determination is Substantively Flawed.

The decision to close or consolidate a post office must be based on certain criteria. These include:

- Effect on the community served;
- Effect on the employees of the post office;
- Compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;

- Economic savings to the Postal Service; and,
- Any other factors the Postal Service determines necessary.

39 U.S.C. § (d)(2).

The Final Determination discusses each of the aforementioned factors that must be considered when closing a Post Office. As it relates to the first factor – Effect on the Community Served – the USPS analyzed that closure would affect 10,179 customers. *Administrative Record, Item 14, Page 1 of 5.* The USPS further took into consideration that closure would affect the area’s considerable senior population and lower income residents. *Demographic and Income Profile, Item 17, Pages 2 & 3 of 3.*

Although the USPS had access to this information, The Final Determination does not demonstrate that seniors, low income households or the disabled was given meaningful consideration. For instance, the USPS generically stated that reduction of services to seniors and the disabled were concerns expressed in the one hundred and twelve (112) questionnaires submissions.¹ Rather than address how closure would not affect this population, the USPS cursorily stated that seniors and the disabled may apply for hardship services. At no point does the USPS indicate what the application process entails, the factors for qualification in the program or *more importantly* the cost to the USPS to maintain effective and regular services to those affected.

¹ The Questionnaires are a part of the Administrative Record and comprise several hundred pages. Since these documents are already part of this record, these pages will not be reproduced but are incorporated herein by reference.

Further, customers were concerned about the overall increase in wait times at the South Arlington Road Post Office. The Postal Service does not provide any information about this concern, and in fact did no research. *See Item 16, Page 1 of 1* which states in handwriting “East Akron Station – Not Shopped.” How the USPS intends to provide effective services to all customers at the South Arlington Road Post Office is unknown in light of the fact that its customer base has effectively doubled upon the closing of the Akron East Post Office.

The USPS conversely overstates the economic savings that will be realized by the USPS. As this Commission is aware, the methodology employed by the USPS has already been criticized by this Commission. Rather than address those flaws, the USPS has continued to overstate the potential savings, and overestimate continued revenue following closure. The economic analysis provided in The Final Determination tracks this flawed methodology.

First, contained in the Administrative Record is Item 38 which is an unknown document authored potentially by a representative of the USPS. This assumption is based on the corresponding grid of protected and redacted financial information one would assume only USPS employees would have access to. Item 18 expressly warns that closing the Akron-East Post Office and relocating services to the South Arlington Road Post Office will result in an additional \$110,446.23 annual expense to the USPS. The Final Determination does not account for this increased expense.

Second, The Final Determination does not account for the financial loss of 97,521 retail transactions the Akron-East Post Office generated in 2009, and that

would continue into 2010, 2011, and beyond. *Retail Customer Data, Item 14, Page 2 of 5.* The revenue generated by these transactions is unknown since this information was redacted. However, the SBOCI financial data indicates that the 2008 walk in revenue was \$422,282.00 at the Akron-East Post Office. Again, the Final Determination does not address this lost revenue. Taken together, this accounts for approximately \$530,000.00 that is unaddressed in The Final Determination.

The Final Determination did not take into consideration the requisite criteria set forth under 39 U.S.C. § 404(d). Accordingly, the USPS' decision to close the Akron-East Post Office was arbitrary, capricious, and an abuse of discretion.

C. The Closure of the Akron-East Post Office was Without Observance of Procedure Required by Law.

The Postal Service did not observe proper procedure as required by law. Specifically, the Postal Service did not:

- Inform customers of their right to appeal the determination;
- Include required findings when notifying customers of the closing;
- Post the Final Determination at the Akron–East post office;
- Make the Administrative Record available for inspection;
- Consider the effects of closure on the community; or,
- Consider the impact of the recent Goodyear reconstruction project.

Further, the Postal Service's determination is unsupported by the substantial evidence on the record. The affected area is home to approximately

24,538 individual taxpayers. The affected area has over 325 businesses with 9,197 estimated employees with an annual payroll of over \$534,377,000.

III. CONCLUSION

The USPS decision to close the Akron-East Post Office was arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law. The closure was without observance of procedure required by law and was unsupported by the substantial evidence on the record. Accordingly, Intervenor requests this Commission to order that the entire matter be returned for further consideration.

Respectfully submitted,

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Director of Law

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